

**ORIGINAL****FILED**

2008 SEP -4 PM 12: 24

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIABY  DEPUTY

1 KAREN MATTESON, Cal. Bar No. 102103  
Email: mattesonk@sec.gov  
2 KELLY BOWERS, Cal. Bar No. 164007  
Email: bowersk@sec.gov  
3 VICTORIA A. LEVIN, Cal. Bar No. 166616  
Email: levinv@sec.gov  
4 JANET E. MOSER, Cal. Bar No. 199171  
Email: moserj@sec.gov  
5 DOHOANG T. DUONG, Cal. Bar No. 219127  
Email: duongdo@sec.gov  
6

7 Attorneys for Plaintiff  
Securities and Exchange Commission  
Rosalind R. Tyson, Acting Regional Director  
8 Andrew G. Petillon, Associate Regional Director  
John M. McCoy III, Regional Trial Counsel  
9 5670 Wilshire Boulevard, 11th Floor  
Los Angeles, California 90036  
10 Telephone: (323) 965-3998  
11 Facsimile: (323) 965-3908

12 **UNITED STATES DISTRICT COURT**  
13 **SOUTHERN DISTRICT OF CALIFORNIA**

**'08 CV 16 20 WQH RBB**

14 **SECURITIES AND EXCHANGE**  
15 **COMMISSION,**

16 Plaintiff,

17 vs.

18 **RETAIL PRO, INC. (fka Island Pacific,**  
19 **Inc.), et al.,**

20 Defendants.  
21  
22  
23  
24  
25  
26  
27  
28

Case No.  
1

**CONSENT OF DEFENDANT  
HARVEY BRAUN TO ENTRY OF  
FINAL JUDGMENT**

1           1. Defendant Harvey Braun ("Defendant") waives service of a summons  
2 and the complaint in this action, enters a general appearance, and admits the Court's  
3 jurisdiction over Defendant and over the subject matter of this action.

4           2. Without admitting or denying the allegations of the complaint (except as  
5 to personal and subject matter jurisdiction, which Defendant admits), Defendant  
6 hereby consents to the entry of the Final Judgment in the form attached hereto (the  
7 "Final Judgment") and incorporated by reference herein, which, among other things:

- 8                   (a) permanently restrains and enjoins Defendant from violation of  
9 Sections 10(b) and 13(b)(5) of the Securities Exchange Act of  
10 1934 ("Exchange Act"), 15 U.S.C. §§ 78j(b) & 78m(b)(5), and  
11 Rules 10b-5, 13b2-1, 13b2-2 and 13a-14 thereunder, 17 C.F.R.  
12 §§ 240.10b-5, 240.13b2-1, 240.13b2-2 & 240.13a-14, and from  
13 aiding and abetting any violation of Section 13(a) of the  
14 Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20 and 13a-  
15 13 thereunder, 17 C.F.R. §§ 240.12b-20 & 240.13a-13;  
16                   (b) orders Defendant to pay a civil penalty in the amount of  
17 \$75,000 under Section 21(d)(3) of the Exchange Act, 15 U.S.C.  
18 § 78u(d)(3); and  
19                   (c) bars Defendant from serving as an officer or director of a public  
20 company for a period of five years pursuant to Section 21(d)(2)  
21 of the Exchange Act, 15 U.S.C. § 78u(d)(2).

22           3. Defendant agrees that he shall not seek or accept, directly or  
23 indirectly, reimbursement or indemnification from any source, including but not  
24 limited to payment made pursuant to any insurance policy, with regard to any civil  
25 penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of  
26 whether such penalty amounts or any part thereof are added to a distribution fund  
27 or otherwise used for the benefit of investors. Defendant further agrees that he  
28 shall not claim, assert, or apply for a tax deduction or tax credit with regard to any

1 federal, state, or local tax for any penalty amounts that Defendant pays pursuant to  
2 the Final Judgment, regardless of whether such penalty amounts or any part thereof  
3 are added to a distribution fund or otherwise used for the benefit of investors.

4 4. Defendant waives the entry of findings of fact and conclusions of law  
5 pursuant to Rule 52 of the Federal Rules of Civil Procedure.

6 5. Defendant waives the right, if any, to a jury trial and to appeal from  
7 the entry of the Final Judgment.

8 6. Defendant enters into this Consent voluntarily and represents that no  
9 threats, offers, promises, or inducements of any kind have been made by the  
10 Commission or any member, officer, employee, agent, or representative of the  
11 Commission to induce Defendant to enter into this Consent.

12 7. Defendant agrees that this Consent shall be incorporated into the Final  
13 Judgment with the same force and effect as if fully set forth therein.

14 8. Defendant will not oppose the enforcement of the Final Judgment on  
15 the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal  
16 Rules of Civil Procedure, and hereby waives any objection based thereon.

17 9. Defendant waives service of the Final Judgment and agrees that entry  
18 of the Final Judgment by the Court and filing with the Clerk of the Court will  
19 constitute notice to Defendant of its terms and conditions. Defendant further  
20 agrees to provide counsel for the Commission, within thirty days after the Final  
21 Judgment is filed with the Clerk of the Court, with an affidavit or declaration  
22 stating that Defendant has received and read a copy of the Final Judgment.

23 10. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the  
24 claims asserted against Defendant in this civil proceeding. Defendant acknowledges  
25 that no promise or representation has been made by the Commission or any  
26 member, officer, employee, agent, or representative of the Commission with regard  
27 to any criminal liability that may have arisen or may arise from the facts underlying  
28 this action or immunity from any such criminal liability. Defendant waives any

1 claim of Double Jeopardy based upon the settlement of this proceeding, including  
2 the imposition of any remedy or civil penalty herein. Defendant further  
3 acknowledges that the Court's entry of a permanent injunction may have collateral  
4 consequences under federal or state law and the rules and regulations of self-  
5 regulatory organizations, licensing boards, and other regulatory organizations. Such  
6 collateral consequences include, but are not limited to, a statutory disqualification  
7 with respect to membership or participation in, or association with a member of, a  
8 self-regulatory organization. This statutory disqualification has consequences that  
9 are separate from any sanction imposed in an administrative proceeding. In  
10 addition, in any disciplinary proceeding before the Commission based on the entry  
11 of the injunction in this action, Defendant understands that he shall not be permitted  
12 to contest the factual allegations of the complaint in this action.

13 11. Defendant understands and agrees to comply with the Commission's  
14 policy "not to permit a defendant or respondent to consent to a judgment or order  
15 that imposes a sanction while denying the allegations in the complaint or order for  
16 proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendant  
17 agrees: (i) not to take any action or to make or permit to be made any public  
18 statement denying, directly or indirectly, any allegation in the complaint or  
19 creating the impression that the complaint is without factual basis; and (ii) that  
20 upon the filing of this Consent, Defendant hereby withdraws any papers filed in  
21 this action to the extent that they deny any allegation in the complaint. If  
22 Defendant breaches this agreement, the Commission may petition the Court to  
23 vacate the Final Judgment and restore this action to its active docket. Nothing in  
24 this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take  
25 legal or factual positions in litigation or other legal proceedings in which the  
26 Commission is not a party.

27 12. Defendant hereby waives any rights under the Equal Access to Justice  
28 Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any

1 other provision of law to seek from the United States, or any agency, or any  
2 official of the United States acting in his or her official capacity, directly or  
3 indirectly, reimbursement of attorney's fees or other fees, expenses, or costs  
4 expended by Defendant to defend against this action. For these purposes,  
5 Defendant agrees that Defendant is not the prevailing party in this action since the  
6 parties have reached a good faith settlement.

7 13. In connection with this action and any related judicial or  
8 administrative proceeding or investigation commenced by the Commission or to  
9 which the Commission is a party, Defendant (i) agrees to appear and be  
10 interviewed by Commission staff at such times and places as the staff requests  
11 upon reasonable notice; (ii) will accept service by mail or facsimile transmission of  
12 notices or subpoenas issued by the Commission for documents or testimony at  
13 depositions, hearings, or trials, or in connection with any related investigation by  
14 Commission staff; (iii) appoints Defendant's undersigned attorney as agent to  
15 receive service of such notices and subpoenas; (iv) with respect to such notices and  
16 subpoenas, waives the territorial limits on service contained in Rule 45 of the  
17 Federal Rules of Civil Procedure and any applicable local rules, provided that the  
18 party requesting the testimony reimburses Defendant's travel, lodging, and  
19 subsistence expenses at the then-prevailing U.S. Government per diem rates; and  
20 (v) consents to personal jurisdiction over Defendant in any United States District  
21 Court for purposes of enforcing any such subpoena.

22 14. Defendant agrees that the Commission may present the Final  
23 Judgment to the Court for signature and entry without further notice.

24 ///

25 ///

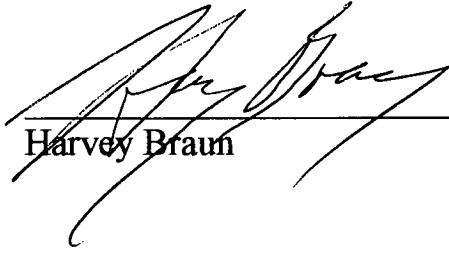
26 ///

27 ///

28 ///

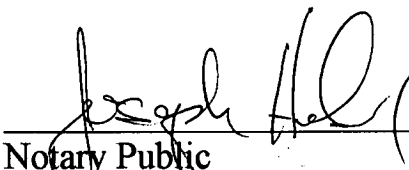
15. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 5/20/08

  
Harvey Braun

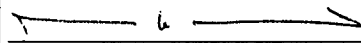
On May 12, 2008, Harvey Braun, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent with full authority to do so on behalf of \_\_\_\_\_ as its

JOSEPH HELMY  
Notary Public, New Jersey  
My Commission Expires May 11, 2011

  
Notary Public

Commission expires: MAY 11, 2011

Approved as to form:

  
Mike Diamond, Esq.  
Milbank Tweed Hadley & McCloy LLC  
601 S. Figueroa St.  
Los Angeles, CA 90017  
Telephone: (213) 892 4500  
Attorney for Defendant Harvey Braun



1 KAREN MATTESON, Cal. Bar No. 102103  
Email: mattesonk@sec.gov  
2 KELLY BOWERS, Cal. Bar No. 164007  
Email: bowersk@sec.gov  
3 VICTORIA A. LEVIN, Cal. Bar No. 166616  
Email: levinv@sec.gov  
4 JANET E. MOSER, Cal. Bar No. 199171  
Email: moserj@sec.gov  
5 DOHOANG T. DUONG, Cal. Bar No. 219127  
Email: duongdo@sec.gov  
6

7 Attorneys for Plaintiff  
Securities and Exchange Commission  
Rosalind Tyson, Acting Regional Director  
8 Andrew G. Petillon, Associate Regional Director  
John M. McCoy III, Regional Trial Counsel  
9 5670 Wilshire Boulevard, 11th Floor  
Los Angeles, California 90036  
10 Telephone: (323) 965-3998  
11 Facsimile: (323) 965-3908

12  
13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 SECURITIES AND EXCHANGE  
16 COMMISSION,

17 Plaintiff,

18 vs.

19 RETAIL PRO, INC. (fka Island Pacific,  
Inc.), et al.,

20 Defendants.  
21  
22  
23  
24  
25  
26  
27  
28

Case No.

**[PROPOSED] FINAL JUDGMENT  
OF PERMANENT INJUNCTION  
AND OTHER RELIEF AGAINST  
DEFENDANT HARVEY BRAUN**



1 The Securities and Exchange Commission ("Commission") having filed a  
2 Complaint ("Complaint") and Defendant Harvey Braun ("Defendant") having  
3 entered a general appearance; consented to the Court's jurisdiction over Defendant  
4 and the subject matter of this action; consented to entry of this Final Judgment  
5 without admitting or denying the allegations of the Complaint (except as to  
6 jurisdiction); waived findings of fact and conclusions of law; and waived any right  
7 to appeal from this Final Judgment:

8  
9 **I.**

10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that  
11 Defendant and Defendant's agents, servants, employees, attorneys, and all persons  
12 in active concert or participation with them who receive actual notice of this Final  
13 Judgment by personal service or otherwise are permanently restrained and enjoined  
14 from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act  
15 of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated  
16 thereunder, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of  
17 interstate commerce, or of the mails, or of any facility of any national securities  
18 exchange, in connection with the purchase or sale of any security:

- 19 (a) to employ any device, scheme, or artifice to defraud;  
20 (b) to make any untrue statement of a material fact or omit to state a  
21 material fact necessary in order to make the statements made, in the  
22 light of the circumstances under which they were made, not  
23 misleading; or  
24 (c) to engage in any act, practice, or course of business which operates or  
25 would operate as a fraud or deceit upon any person.  
26

27 **II.**

28 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that

1 Defendant and Defendant's agents, servants, employees, attorneys, and all persons  
2 in active concert or participation with them who receive actual notice of this Final  
3 Judgment by personal service or otherwise are permanently restrained and enjoined  
4 from violating Section 13(b)(5) of the Exchange Act, 15 U.S.C. § 78m(b)(5), by  
5 knowingly circumventing or knowingly failing to implement a system of internal  
6 accounting controls, or by knowingly falsifying any book, record or account  
7 required to be kept by Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C.  
8 § 78m(b)(2)(A), in order to, in reasonable detail, accurately and fairly reflect the  
9 transactions and dispositions of the assets of the issuer.

10  
11 **III.**

12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that  
13 Defendant and Defendant's agents, servants, employees, attorneys, and all persons  
14 in active concert or participation with them who receive actual notice of this Final  
15 Judgment by personal service or otherwise are permanently restrained and enjoined  
16 from violating Rule 13b2-1 of the Exchange Act, 17 C.F.R. § 240.13b2-1, by,  
17 directly or indirectly, falsifying or causing to be falsified, any book, record, or  
18 account subject to Section 13(b)(2)(A) of the Exchange Act.

19  
20 **IV.**

21 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that  
22 Defendant and Defendant's agents, servants, employees, attorneys, and all persons  
23 in active concert or participation with them who receive actual notice of this Final  
24 Judgment by personal service or otherwise are permanently restrained and enjoined  
25 from violating, directly or indirectly, Rule 13b2-2 of the Exchange Act, 17 C.F.R.  
26 § 240.13b2-2, while an officer or director of an issuer by:

- 27 A. making or causing to be made a materially false or misleading  
28 statement; or

1 B. omitting to state, or causing another person to omit to state, any  
2 material fact necessary in order to make statements made, in light of  
3 the circumstances under which such statements are made, not  
4 misleading;

5 to an accountant in connection with:

- 6 1. any audit, review or examination of the financial statements of  
7 the issuer required to be made, or  
8 2. the preparation or filing of any document or report required to  
9 be filed with the Commission.

10  
11 V.

12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that  
13 Defendant and Defendant's agents, servants, employees, attorneys, and all persons  
14 in active concert or participation with them who receive actual notice of this Final  
15 Judgment by personal service or otherwise are permanently restrained and enjoined  
16 from violating Exchange Act Rule 13a-14, 17 C.F.R. § 240.13a-14, by falsely  
17 certifying that:

- 18 (a) any required issuer report does not contain any untrue statement of a  
19 material fact or omit to state a material fact necessary to make the  
20 statements made, in light of the circumstances under which such  
21 statements were made, not misleading with respect to the period  
22 covered by the report; and  
23 (b) the information contained in the report fairly presents in all material  
24 respects the financial condition, results of operations, and cash flows  
25 of the issuer as of, and for the periods presented in the report.

26  
27 VI.

28 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that

1 Defendant and Defendant's agents, servants, employees, attorneys, and all persons  
2 in active concert or participation with them who receive actual notice of this Final  
3 Judgment by personal service or otherwise are permanently restrained and enjoined  
4 from aiding and abetting any violation of Section 13(a) of the Exchange Act, 15  
5 U.S.C. § 78m(a), and Rules 12b-20 and 13a-13 thereunder, 17 C.F.R. §§ 240.12b-  
6 20 & 240.13a-13, by knowingly providing substantial assistance to an issuer that  
7 files quarterly reports with the Commission on Forms 10-Q that fail to contain  
8 material information necessary to make the required statements in the Forms 10-Q,  
9 in light of the circumstances under which they are made, not misleading.

10  
11 **VII.**

12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that,  
13 pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2),  
14 Defendant is prohibited, for five years following the date of entry of this Final  
15 Judgment, from acting as an officer or director of any issuer that has a class of  
16 securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l,  
17 or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15  
18 U.S.C. § 78o(d).

19  
20 **VIII.**

21 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that  
22 Defendant shall pay a civil penalty in the amount of \$75,000 pursuant to Section  
23 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). Defendant shall make this  
24 payment within ten (10) business days after entry of this Final Judgment by  
25 certified check, bank cashier's check, or United States postal money order payable  
26 to the Securities and Exchange Commission. The payment shall be delivered or  
27 mailed to the Office of Financial Management, Securities and Exchange  
28 Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3,

1 Alexandria, Virginia 22312, and shall be accompanied by a letter identifying  
2 Defendant Harvey Braun as a defendant in this action; setting forth the title and  
3 civil action number of this action and the name of this Court; and specifying that  
4 payment is made pursuant to this Final Judgment. Defendant shall pay post-  
5 judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The  
6 Commission shall remit the funds paid pursuant to this paragraph to the United  
7 States Treasury.

8  
9 **IX.**

10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the  
11 Consent is incorporated herein with the same force and effect as if fully set forth  
12 herein, and that Defendant shall comply with all of the undertakings and  
13 agreements set forth therein.

14  
15 **X.**

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court  
17 shall retain jurisdiction of this matter for the purposes of enforcing the terms of this  
18 Final Judgment.

19  
20 **XI.**

21 There being no just reason for delay, pursuant to Rule 54(b) of the Federal  
22 Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment  
23 forthwith and without further notice.

24  
25 DATED:

26 UNITED STATES DISTRICT JUDGE